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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re:)	Case No. 12-32118
)	
CITY OF STOCKTON, CALIFORNIA,)	D.C. No. SA-1
)	
Debtor.)	Chapter 9
)	
)	
)	Date: May 28, 2013
)	Time: 9:30 a.m.
)	Dept: C, Courtroom 35
)	Judge: Hon. Christopher M. Klein

REPLY OF ASSURED GUARANTY CORP. AND ASSURED GUARANTY MUNICIPAL CORP. TO CITY OF STOCKTON'S OPPOSITION TO MOTION PURSUANT TO RULE 52(b) OF THE FEDERAL RULES OF CIVIL PROCEDURE, AS INCORPORATED BY RULE 7052 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE, TO ALTER OR AMEND THE COURT'S FINDINGS OF FACT MADE ORALLY ON THE RECORD ON APRIL 1, 2013

1 By its post-trial motion [Dkt. No. 848], Assured Guaranty Corp. and Assured Guaranty
2 Municipal Corp. (collectively, “Assured”)¹ respectfully request that the Court correct its findings
3 that Assured (1) “voted with [its] feet” and acted as a “stone wall” during the negotiations with the
4 City and (2) “did not negotiate in good faith within the meaning of section 53760.3” of the
5 California Government Code. See FOF at 579:18-20, 589:14-21. Assured has no intention to
6 “relitigate old issues, to advance new theories, or to secure a rehearing on the merits,” Sheldon L.
7 Pollack Corp. v. Universal Health Servs. Inc., 919 F.2d 741 (9th Cir. 1990) (citing Fontenot v. Mesa
8 Petroleum Co., 791 F.2d 1207, 1219 (5th Cir. 1986)), but seeks to correct errors of fact or law that
9 are overcome by unequivocal and undisputed evidence that Assured negotiated in good faith
10 throughout the AB 506 process. See Sharian v. United States, 2002 WL 31558047 (N.D. Cal. Apr.
11 18, 2002). The Court has broad discretion under Rule 52(b) to reconsider the evidence and alter or
12 amend its findings in these circumstances. See R.C. Fischer and Co. v. Cartwright, 2011 WL
13 6025659, *4-*5 (N.D. Cal. Dec. 5, 2011); 9C Wright & Miller, Federal Practice and Procedure: Civil
14 3d § 2582, at 352 (3d ed. 2008).

15 The Court should reject the City’s arguments in opposition to the Motion. Instead of
16 grappling with the uncontroverted facts that support Assured’s position, the City instead merely
17 contends that the Court’s “reasonable inferences” or “credibility determinations” must not be
18 disturbed. See City of Stockton’s Opposition to Motion of Assured Guaranty Corp. and Assured
19 Guaranty Municipal Corp. Pursuant to Rule 52(b) of the Federal Rules of Civil Procedure To Alter
20 or Amend the Court’s Findings of Fact (the “City’s Opposition”) [Dkt. No. 902]. The City declines
21 to address the direct evidence demonstrating that Assured had indeed negotiated in good faith
22 pursuant to California Government Code section 53760.3 because the City had already conceded the
23 point. Prior to the eligibility hearing, the City had admitted that Stockton and the interested parties
24 had cooperated, had made “good faith efforts” and “engaged in serious discussions” throughout the

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26 ¹ Capitalized terms not otherwise defined herein have the same meanings ascribed to such terms in
27 the Motion of Assured Guaranty Corp. and Assured Guaranty Municipal Corp. Pursuant to Rule
28 52(b) of the Federal Rules of Civil Procedure, as Incorporated by Rule 7052 of the Federal Rules of
Bankruptcy Procedure, To Alter or Amend the Court’s Findings of Fact Made Orally on the Record
on April 1, 2013 (the “Motion”) [Dkt. No. 871].

1 AB 506 process, see, e.g., Eligibility Brief at 19:1-3, 22:19-25. Moreover, the City cannot dispute
2 that Assured continued to negotiate *after* the May 16 mediation session with Judge Mabey, and thus
3 no “reasonable inferences” or “credibility determinations” to the contrary should be made. Finally,
4 there is also no dispute that “[t]he City chose to bear the entire burden” of the AB 506 costs rather
5 than invoice Assured, when Assured asserted its contractual rights. City’s Reply at 45:10-11.

6 **A. The Court Should Amend Its Findings Because The Evidence Clearly Shows**
7 **That Assured Negotiated In Good Faith.**

8 Prior to its May 14, 2013 Opposition — aside from remarking at the tail end of its reply that
9 Assured had not paid toward the costs of the neutral evaluation, see City’s Reply at 45:3-11 — the
10 City had never once put at issue Assured’s good faith. The City and its bankruptcy counsel are well
11 aware (and the record plainly establishes) that Assured did not end its negotiations with the City or
12 “vote with [its] feet” after the City declined to take any steps to address its soaring pension debt on
13 May 16, 2012. Negotiations and meetings took place after that event, during which Assured
14 engaged the City to reach a fair resolution. While these negotiations ultimately failed, it cannot be
15 said that Assured acted as a “stone wall” in any respect. On these points, the evidence of Assured’s
16 good faith is unequivocal and undisputed, and findings to the contrary are not warranted.

17 The City does not dispute that *after* May 16 Assured initiated multiple discussions with
18 counsel for the City in order to “explore repayment options or alternatives, ... as well as budget
19 efficiencies and sources of revenue.” Compare Assured Offer of Proof, Bjork Decl. ¶¶ 5-6 with
20 Levinson Supp. Decl. ¶ 3. Nor does the City address the evidence demonstrating that financial
21 representatives of Assured and the City met *after* May 16 to continue negotiations. Supplemental
22 Declaration of Ann Goodrich in Support of City of Stockton’s Statement of Qualifications under
23 Section 109(c) of the United States Bankruptcy Code [Dkt. No. 451; Tr. Ex. 1373], Ex. A at 3
24 (“Goodrich Supp. Decl.”). Notably, before it was in the City’s interests to minimize Assured’s
25 efforts at negotiation, the City previously had vouched for such “good faith efforts ... [of] the
26 interested parties,” Decl. of Laurie Montes ¶ 46 [Dkt. No. 23; Tr. Ex. 1054]; Levinson Decl. ¶ 7, the
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28

1 “serious discussions ... aimed at reaching a consensual restructuring,” Eligibility Br. at 22:19-25,
2 and the “specific restructuring proposals” advanced by Assured, Goodrich Supp. Decl., Ex. A.

3 The City has made virtually no attempt to refute the evidence showing that Assured
4 continued to negotiate in good faith throughout the neutral evaluation process and fails to explain
5 why its previous statements endorsing Assured’s good faith efforts should be ignored. The City
6 instead tries to persuade the Court that — in light of statements made by another creditor — the
7 Court was nonetheless justified in “reasonably infer[ring]” that Assured believed that “there was
8 nothing left to negotiate in the AB 506 process” after May 16. See City’s Opposition at 4:14-26.
9 The City, however, concedes that Assured never adopted this stance and that, in fact, Assured
10 continued to negotiate with the City. See Levinson Supp. Decl. ¶ 3 (confirming Mr. Bjork’s
11 description of Assured’s participation in the neutral evaluation process as “mostly accurate”).

12 With respect to the City’s own statements praising the parties’ efforts during the neutral
13 evaluation process, the City now accuses Assured of “attempt[ing] to slip under the cover of” what it
14 describes as “general statements.” City’s Opposition at 5:17-23. The City offers no basis for
15 reinterpreting its own statements, aside from noting that the City ultimately reached agreements with
16 its labor unions. The City also attempts to dismiss all of the evidence tending to undermine its
17 position as “circumstantial.” The direct testimony declarations and statements in pleadings
18 discussing Assured’s efforts to negotiate in good faith are not “circumstantial,” but direct evidence
19 that requires no additional inferences. See McCormick on Evidence §185 (“Direct evidence is
20 evidence which, if believed, resolves a matter in issue.... [D]irect evidence from a qualified witness
21 offered to help establish a provable fact can never be irrelevant.”). The City would have the Court
22 stop any further inquiry *after* May 16 because “Judge Mabey did not schedule any further mediation
23 sessions between the Capital Markets Creditors and the City.” See City’s Opposition at 4:19-22.²
24 The “inferences” the City would have this Court draw from this May 16 mediation session should
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27 ² As the parties are barred from disclosing the substance of their conversations with Judge Mabey,
28 Assured invites the Court to confer with Judge Mabey before reaching any further conclusion on
these grounds that Assured did not negotiate in good faith.

1 not trump the uncontroverted facts that both Assured's counsel *and* Assured's financial advisors
2 continued to engage with the City *after* May 16.

3 **B. Assured Has Met Its Obligations As To The Neutral Evaluation Fees, And The**
4 **City's Choice To Pay The Fees Has No Bearing On Assured's Good Faith.**

5 Assured does not dispute that the City alone paid the fees associated with the neutral
6 evaluation process. Assured has made no attempt to "evade" this fact, see City's Opposition at
7 6:13-21, and Assured has not requested that the Court amend any finding on this point. However,
8 the City's decision to "bear the entire burden itself," see City's Reply at 45:10-11, neither supports a
9 finding that Assured failed to negotiate in good faith nor renders moot Assured's objections to the
10 City's actions during the neutral evaluation process.

11 Assured did not shirk a duty to contribute to the fees associated with the neutral evaluation
12 process. The obligation to pay the costs of the neutral evaluation rested with the City, not Assured,
13 as the City previously agreed that it was responsible for any post-default costs incurred by Assured,
14 an arrangement that is specifically permitted under California Government Code sec. 53760.3(s)
15 ("The local public entity shall pay 50 percent of the costs of neutral evaluation ... and the creditors
16 shall pay the balance, unless otherwise agreed to by the parties."). The City now attempts to dismiss
17 its contractual obligations as "boilerplate language," City's Opposition at 7:4-6, but otherwise offers
18 nothing more than a bald assertion that "the costs inherent to the neutral evaluation process were not
19 the result of a default." Id. at 7:6-10.

20 For these reasons, the Court should amend its findings respecting Assured's nonpayment of
21 the neutral evaluation fees and alter its legal conclusion that Assured is barred from "complaining
22 about whether the California procedure has been complied with because they have, in effect created
23 their own self-inflicted harm." FOF at 579:18-580:7.

1 WHEREFORE, Assured respectfully requests that this Court GRANT the motion under Rule
2 52(b) and alter or amend its findings that Assured did not negotiate in good faith, amend its
3 judgment accordingly, and grant such further relief as is just and proper under the circumstances.

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5 DATED: May 21, 2013

Respectfully Submitted,

SIDLEY AUSTIN LLP

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7 By: /s/ Jeffrey E. Bjork

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